

**REMARKS/ARGUMENTS**

By this Amendment and concurrently filed Request for Continuing Examination, Applicant responds to the Final Office action mailed on December 15, 2009.

Claims 3-8, 12-14, 17, 21 and 23-25, remain pending in this application. To clarify the subject matter of the application and to simplify the amendments of the claims, Applicant deleted the independent claims 1, 15 and 20, and added new independent claims 29, 30a and 31 corresponding to the cancelled independent claims 1, 15, and 20, respectively. Method claims 26-28 are withdrawn in response to the Restriction Requirement previously raised by the Examiner.

More particularly, the new independent claims 29 and 31 (former 1 and 20) are now directed to a fence including two spaced apart posts having respective channels. The channel of each post is defined by opposing side walls of the post, and has a longitudinal entry into the post. The posts are arranged such that the longitudinal entry of each channel faces toward the longitudinal entry of the channel of the other post. The fence further includes a barrier panel extending between the posts and a plinth disposed below the barrier panel. The plinth is formed from sheet metal and is received in the channels of the posts so as to be in contact with a ground surface on which the fence is constructed. The plinth is also further defined as being profiled to extend laterally out of a notional centre plane extending between its side edges whereby opposite end margins of the plinth are retained immediately proximate the side walls of the post by the fit of the end edge margins within the channels. The plinth enters the posts through the longitudinal entry of each of the post channels.

The new Claim 29 further defines the barrier panel as including a lower rail that is also received by the posts through the longitudinal entry of each of the channels, wherein the plinth is located below the rail. Moreover, the plinth is profiled to include stiffening formations extending along the plinth which retain the

end edge margins of the plinth immediately proximal to the opposite side walls of the posts as described above.

The fence of the new claim 30 (former 15) includes a plurality of the plinths located one above another in an overlapping relationship to form a plinth assembly, such that each overlapping region of the plinth assembly forms a region of increased stiffness in the assembly. The plinths in the plinth assembly include stiffening formations as *per* new claim 29.

Related changes were made to the remaining ones of the amended claims to address antecedent definition issues introduced by the amendments to the main claims and/or to further clarify the subject matter of those claims.

The support for the new claim 29 is found throughout the specification such as at page 9, lines 24-26 describing the relationship of the opposing side and end edges of the plinth together with Fig. 2; Fig. 1 showing a fence with a barrier panel including a lower rail wherein the barrier panel is received in the channels of the posts and having a plinth of the invention located below the lower rail in contact with the ground surface on which the fence is constructed; page 9, lines 16-17 describing plinths embodied by the invention as being formed from metal sheet; page 11, lines 1-6 describing opposing side walls of the posts that define the channels of the posts together with Fig. 4; page 8, lines 18-32, Fig. 1 and Fig. 4 describing reception of a barrier panel and plinth of the invention in the channels of the fence posts; and page 11, lines 3-14 describing plinths embodied by the invention as being profiled such that the end edge margins thereof are retained immediately proximal to the opposing side walls of the posts by the fit of the end edge margins in the channels, and in cancelled claim 1 together with claim 17 and Fig. 4.

The support for the new claim 30 is provided in cancelled claims 15, 9-11, 18-19; and in specification, page 10, lines 11-25, Fig. 8 and Fig. 9 relating to a plinth

assembly comprising a plurality of plinths arranged one above another in partial overlapping relationship.

The support for the new claim 31 can be found in cancelled claim 20 as well as in the specification as described above in relation to claim 29.

**Rejection under 35 U.S.C. §112**

In the Office action the Examiner rejected claims 18 and 19 under 35 U.S.C. §112, second paragraph as indefinite.

Claims 18 and 19 are cancelled by this amendment.

**Rejection under 35 U.S.C. §102**

The Examiner has raised novelty rejections in light of Gandara (US 5,494,261) and Whitehead (GB 2323611). Applicant appreciates the time and consideration provided by the Examiner in reviewing this application but traverses the rejection at least for the following reasons.

Gandara does not teach a fence comprising spaced apart fence posts that include respective channels that face toward one another and a barrier panel extending between the posts, wherein a fence plinth is located below the lower rail in contact with a ground surface on which the fence is constructed as claimed in the new independent claims 29 and 31. Indeed, it is submitted that Gandara is entirely silent on the provision of a fence including a fence plinth. Rather, Gandara simply teaches a fence with a lower rail (26) *spaced from* the ground surface as shown in Fig. 1 of that citation.

It is also submitted that both Gandara and Whitehead are entirely silent on the provision of a fence including a plinth assembly comprising a plurality of plinths as required by the new claim 30 wherein the plinths are arranged one above another in

an overlapping relationship and wherein a lowermost one of the plinths is in contact with a ground surface on which the fence is constructed.

Moreover, Whitehead relates to a metal fence comprising a plurality of fencing panels (10) each of which comprises a pair of side by side infill sheets (11). The metal infill sheets terminate in integrally formed upright elements which form end frame members 12b and 12d, which can be used as structures (24) for receiving a post (see page 5, line 29 to page 6, line 1, and Fig. 3). As shown in Fig. 2, the end flanges of the bottom frame member (12d) of the fencing panels are received *about* the base of the upright element rather than entering the upright element through the respective *longitudinal entry* of each of the upright members as required by the independent claims of the present application. Accordingly, it is submitted that the lower frame member/rail (12d) can not be considered to be a plinth of a fence of the present invention, nor does Whitehead contemplate the provision of a fence plinth as in the present invention.

#### **Rejection under 35 U.S.C. §103**

The Examiner has raised obviousness rejections in light of Gandara (US 5,494,261), and in light of Gandara further in view of Whitehead (GB 2,323,611).

As stated at page 1, lines 3-9 of the specification as filed, the application relates to a plinth *used at the base* of a fence construction. The plinth is in contact with the ground surface on which the fence is constructed and is used to fill the gap *under* the lower rail/barrier panel, which is particularly useful when the fence is constructed on uneven or sloping ground, and inhibits the passage of noise, wind, weeds and the like from passing under the fence. The plinth is profiled to extend laterally out of notional centre plane whereby the end edge margins are retained immediately proximate the opposing side walls of the posts by the fit of the end edge margins

within the channels of the fence posts. This can be affected by stiffening formations that extend along the plinth(s) as defined in the new independent claims 29 and 30.

As described above, Gandara is entirely silent in relation to, and provides no consideration whatsoever of the provision of, a fence including a *fence plinth disposed under a barrier panel to be in contact with a ground surface on which the fence is constructed* as now claimed. Indeed, Gandara simply discloses a fence with upper and lower barrier panels 18, 20 fastened to metal fence posts 86. In fact, the fence shown in Fig. 1 of Gandara has a clear gap between the lower rail 26 of the fence and the ground surface. Accordingly, Gandara merely describes the provision of corrugated barrier panels bordered by a top rail and a bottom/lower rail (*as distinct from a fence plinth*) wherein the lower rail is *spaced from* the ground surface (e.g., so as to inhibit corrosion and avoid damage to any paint/corrosion resistant coating applied to the lower rail).

Further, as illustrated in Fig. 2 of Whitehead, the infill/barrier panel of that citation is formed by side by side infill sheets (11) with integrally formed upright sectional members which are disposed one within the other to form end frame members 12b and 12d, the arrangement being such that there is *no channel with a longitudinal entry* in either of the end frame members that faces the a longitudinal entry of a channel of the other end frame member *through which a plinth can be inserted* as required by the independent claims of the present invention. This is more clearly shown in Fig. 2 of Whitehead. Hence, Whitehead provides no motivation to provide a fence incorporating a plinth as now claimed and it is submitted, is directed to an entirely different type of fence construction to that of the present invention.

As with Gandara, Whitehead is also entirely silent and provides no teaching, suggestion, nor motivation to provide a fence with a plinth assembly comprising a plurality of plinths as required by claim 30 of the present application, let alone

plinths arranged one above the other in partial overlapping relationship, wherein the plinth(s) are received through the longitudinal entry of respective channels of the fence posts and are profiled to have stiffening formations as required that claim.

Accordingly, it is further submitted that neither Gandara nor Whitehead, alone or in combination teach or suggest a fence incorporating a plinth or plinth assembly as now claimed. Moreover, a person of ordinary skill in the art would not be led to combine the disclosures of Gandara and Whitehead together given the citations relate to fences of entirely different construction in regard to fixing of barrier/infill panels to fence posts, and so are incompatible with one another for the reasons discussed above. In particular, it submitted that a person of ordinary skill in the art would not look to combine a disclosure relating to the provision of barrier panels with integrally formed end frame members 12b and 12d arranged to form fence post elements as in Whitehead with a disclosure teaching the fastening of barrier panels 10 to separate metal fence posts 86 as in Gandara.

As such, the claims of the present application as currently amended must be considered to be novel and non-obvious over the cited prior art, and allowance of this application is respectfully requested.

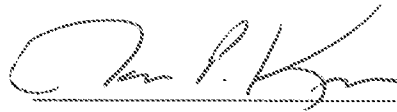
For the reasons outlined above it is submitted that neither Gandara nor Whitehead, alone or in combination teach or suggest a fence plinth or plinth assembly as claimed in the new independent claims 29 and 31 of the present application, and such the above referenced dependent claims must also be considered novel and non-obvious.

Therefore, the application is now in condition for allowance, which allowance is earnestly solicited.

The Commissioner is hereby authorized to charge any fees, which may be required in connection with this correspondence, to Deposit Account No. 06-1135.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

A handwritten signature in dark ink, appearing to read "James P. Krueger", is written over a horizontal dotted line.

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